IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 2160 of 2007(Y)

PETITIONER:-

THE AMINI ISLAND CO-OPERATIVE SUPPLY &
MARKETING SOCIETY LTD.NO.LMA-3 LAKSHADWEEP
REPRESENTED BY ITS PRESIDENT, T.T.NALLAKOYA.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

RESPONDENTS:-

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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   DEPARTMENT OF CO-OPERATIVE & CIVIL SUPPLIES
   KAVARATTI ISLAND, LAKSHADWEEP.

2. THE ADMINISTRATOR,
   UNION TERRITORY OF LAKSHADWEEP.

3. SRI.K.K.KHALID, LABOURER,
   AMINI ISLAND CO-OPERATIVE SUPPLY & MARKETING
   SOCIETY, P.O.AMINI, LAKSHADWEEP.

R1 & R2 BY STANDING COUNSEL SRI.SHAFIK M.ABDULKHADIR.

R3 BY ADV. SRI.NOUSHAD THOTTATHIL
SMT.NOORJI NOUSHAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF THE RULES OF RECRUITMENT.

EXT.P2 - TRUE COPY OF ORDER DT.30.12.2003.

EXT.P3 - TRUE COPY OF CONSENT LETTER OF 3RD RESPONDENT.

EXT.P4 - TRUE COPY OF RESOLUTION DATED 2.4.2005.

EXT.P5 - TRUE COPY OF RESOLUTION DATED 8.9.2005.

EXT.P6 - TRUE COPY OF REPRESENTATION.

EXT.P7 - TRUE COPY OF ORDER DATED 29.9.2005.

EXT.P8 - TRUE COPY OF ORDER DATED 14.10.2005.

EXT.P9 - TRUE COPY OF ORDER OF 1ST RESPONDENT DATED 31.10.2005.

EXT.P10 - TRUE COPY OF APPEAL BEFORE 2ND RESPONDENT.

EXT.P11 - TRUE COPY OF ORDER OF 2ND RESPONDENT DT.8.5.2006.

EXT.P12 - TRUE COPY OF REPLY STATEMENT OF PETITIONER.

EXT.P13 - TRUE COPY OF ORDER DATED 3.1.2007 OF 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

EXT.R3(1) - TRUE COPY OF THE SPECIAL BYELAW RELATING TO THE SERVICE CONDITIONS OF SOCIETY EMPLOYEES.

EXT.R3(2) - TRUE COPY OF NOTICE REF.F.NO.20/2003-2004/SMS(AMN) DATED 30.09.03 ISSUED BY THE SECRETARY OF THE PETITIONER SOCIETY.

EXT.R3(3) - TRUE COPY OF THE OFFICE MEMORANDUM F.NO.3/2003-04/SMS(AMN) DATED 23.03.2005.

EXT.R3(4) - TRUE COPY OF THE ORDER DATED 3.4.2005 F.NO.20/2003-04/SMS (AMINI) ISSUED BY THE PRESIDENT OF THE PETITIONER SOCIETY IN FAVOUR OF THE THIRD RESPONDENT.

EXT.R3(5) - TRUE COPY OF THE BYELAW OF AMINI ISLAND CO-OPERATIVE SUPPLY AND MARKETING SOCIETY LTD.

- TRUE COPY -

K.Padmanabhan Nair,J.

W.P.(C).No.2160 of 2007-F

Dated, this the 21st day of February, 2007

JUDGMENT

Amini Island Co-operative Supply & Marketing Society is the petitioner. The petitioner is challenging an order passed by the 1st respondent by which he had directed the Board of Directors of the petitioner to reinstate the 3rd respondent as Salesman and then consider whether he is possessed of required qualification for that post.

2. The 3rd respondent was working as a Casual Labourer. By Exhibit P3, he was directed to take the charge of the Salesman. He filed Exhibit P3 undertaking and was discharging the functions of Salesman. As per Exhibit P4, he was regularised as Salesman by the then Board of Directors. That decision was reviewed by the subsequent Board of Directors on the ground that the 3rd respondent does not possess necessary qualifications. That order was challenged by the 3rd respondent before the Registrar, who set aside the orders of the Board of Directors and directed the Society to reinstate the 3rd respondent. Challenging that order, the petitioner filed an appeal before the

Administrator. The Administrator set aside the order passed by the Registrar and remanded the matter to the Registrar. The Registrar, after considering all the aspects of the matter, passed the impugned order.

3. The only grievance raised by the petitioner is that the Registrar ought to have directed the Board of Directors to conduct an enquiry first and then reinstate the 3rd respondent in case he was possessed of the required qualification.

4. There is dispute regarding the bye-law applicable to the parties. According to the petitioner, Exhibit P1 is the bye-law that is applicable, but according to the 3rd respondent, it is Exhibit R3(1). Mr.Shafik M.Abdul Khadir appearing for the Registrar also submits that it is not Exhibit P1 that now governing the Society, but Exhibit R3(1).

5. It is admitted that the 3rd respondent is not discharging the functions of a Salesman and from August, 2005 onwards he is not being paid the salary of a Salesman also. In the facts and circumstances of the case, the Registrar himself ought to have examined whether 3rd respondent is possessed of the requisite qualifications for the post of Salesman.

In the result, the Writ Petition is disposed of in the following manner: The order Exhibit P13 passed by the Registrar on 3.1.2007 is hereby set aside. The Registrar himself shall consider whether the 3rd respondent is possessed of the requisite qualifications for the post of Salesman in accordance with the bye-laws governing the Society after hearing the petitioner as well as the 3rd respondent. It is open to the parties to produce the documents to prove the qualification and entitlement of the 3rd respondent, if any, before the Registrar. Such a decision shall be taken within one month from the date of receipt of a copy of this judgment. I.A.No.2454 of 2007 shall stand closed.

K.Padmanabhan Nair
Judge

vku/-